

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

MINUTES OF BOARD MEETING

November 19, 2008, 10:00 a.m.
City Council Chambers
City of Indio
150 Civic Center Mall
Indio, CA 92201-4434

TELEPHONIC MEETING LOCATION

Hotel Mimosa Riverwalk
524 South St. Mary's Street
San Antonio, Texas 78205
Phone: (210) 354-1333

The California Regional Water Quality Control Board, Colorado River Basin Region, was called to order by the Chair Ellen Way at 10:05 a.m. on November 19, 2008 in the City Council Chambers, City of Indio, California. Note that the agenda items listed below were not considered in numerical order due to the needs of Board Members Jon Edney and Red Martinez to leave the meeting early to attend to other matters. As a result, Mr. Edney left the meeting prior to the Board's consideration of Item No. 6 (McCabe), and Mr. Martinez left the meeting prior to the Board's vote on Item No. 6.

Roll Call (Board Members Only)

Board Members Present:

Tom Davis, Jon Edney, Jeff Hays, Maurice "Red" Martinez, Edward Muzik, Rick Post and Ellen Way. The Board Secretary stated that a quorum was present. Red Martinez was on a telephonic connection and had to leave the meeting at 11:00 a.m. Jon Edney had to leave the meeting at 11:24 a.m.

Staff Present:

Adnan Al-Sarabi, Jose Angel, Terry Barnes, John Carmona, Kai Dunn, Jose Figueroa-Acevedo, Cecilia Irwin, Robert Perdue, Cliff Raley, Jon Rokke, Jennie Snyder, Hilda Vasquez, Doug Wylie.

Others Present:

Arlyn Atadero, Assistant Superintendent, McCabe School District
Steve Bigley, Coachella Valley Water District
Barbara Bradley, Advanced Onsite Systems
Amanda Brooke, Superintendent, McCabe School District
Jeff Hoskinson, Law Firm of Bowie, Arneson, Wiles & Giannone

John McFadden, Chair, Coachella Valley Water District
Mayumi Okamoto, Office of Enforcement
Erik Spiess, Office of Enforcement
Paul Toor, Coachella Sanitation District
Tom Vandenberg, Office of the Chief Counsel, SWRCB

Minutes

1. Minutes of September 17, 2008 Board Meeting

MOTION: Jeff Hays moved, Rick Post seconded, and motion carried unanimously that the Minutes be approved. Tom Davis abstained since he was unable to attend that Board meeting.

Public Forum

2. No public comments.

UNCONTESTED WASTE DISCHARGE REQUIREMENTS

- | | | |
|-------|--------------|--|
| 3. JF | R7-2008-0020 | Waste Discharge Requirements for Niland Sanitary District, Niland Wastewater Treatment Plant – Imperial County |
| 4. CR | R7-2008-0038 | Waste Discharge Requirements for Mt. San Jacinto Winter Park Authority, Owner/Operator, California Department of Parks and Recreation, Land Owner, Palm Springs Aerial Tramway, Mountain Station Wastewater Treatment and Disposal System , San Jacinto State Park, Palm Springs – Riverside County |
| 5. CR | R7-2008-0074 | Rescission of Waste Discharge Requirements (Board Orders R7-2006-0008 and R7-2007-0014) for Pacific Gas & Electric Company , Owner/Operator, Topock Compressor Station – Floodplain Reductive Zone in-situ Pilot Test, Needles – San Bernardino County |

MOTION: Jon Edney moved, Rick Post seconded. The motion carried unanimously that Order Nos. R7-2008-0020, R7-2008-0038, and R7-2008-0074 be adopted.

ENFORCEMENT ACTIONS

6. DW R7-2008-0067 Cease and Desist Order No. R7-2008-0067 issued to **McCabe Union School District**, Owner/Operator Wastewater Treatment Plant, El Centro – Imperial County

Mr. Angel made a presentation on behalf of the Prosecution Team and discussed the violations leading to the proposed enforcement Order and steps taken to correct the violations. He recommended that the Regional Board adopt the proposed Order, with errata, and make the Order's effective date retroactive to September 17, 2008. Mr. Angel explained that this was the date of the last Board meeting, which was the earliest in which this Order could have been presented by Board staff to the Board for consideration of adoption. He added that if the proposed Order had been brought to the Board at that time, then the Board's adoption of the Order would have enabled the Discharger to avoid accruing any more Mandatory Minimum Penalties thereafter, as provided by the MMP exemption in Water Code section 13385(j)(3). Mr. Angel also explained, however, that other staffing priorities prevented staff from being able to prepare the proposed Order in time for that September Board meeting. As a result, he argued that the Discharger should not be held responsible for paying the additional MMPs that accrued due to Board staff's work load issues, a matter over which the Discharger has no control. Mr. Angel stated that the errata, in part, provided the Discharger additional time for complying with the terms of the Order. Superintendent Brooke informed the Board that the District was taking the necessary steps to ensure that it complied with Board requirements and also asked to make the proposed Order's effective date at least retroactive to September 2008. Mr. Vandenberg, counsel for the Advisory Team, argued against making the Order's effective date retroactive to September 2008 or any other date preceding the effective date of the Board's adoption of the proposed Order, explaining that the plain meaning of the statute prevented any reasonable interpretation of section 13385(j)(3) as allowing for retroactive application of the MMP exemption. As a result, he recommended that the effective date needed to be the date the Regional Board adopts the Order. Mr. Perdue also recommended that the effective date of the Order be the date the Regional Board adopts the Order. Ms. Way closed the Public Hearing on the matter and brought the issue to the Regional Board members for discussion.

MOTION: Jeff Hays moved, Rick Post seconded. The motion carried in a roll call vote of five "ayes" that Order No. R7-2008-0067 be adopted as amended with the errata and with an effective date as recommended by the Advisory Team. Jon Edney left the meeting prior to this agenda item being considered. Red Martinez left the telephonic meeting location prior to the Board's vote.

7. DW R7-2008-0069 Special Order amending Cease and Desist Order No. R7-2008-0008 for the **City of Brawley**, Owner/Operator Brawley Wastewater Treatment Plant, Brawley – Imperial County

MOTION: Jeff Hays moved, Rick Post seconded. The motion carried unanimously that Order No. R7-2008-0069 be adopted.

8. DW R7-2008-0070 Administrative Civil Liability Order No. R7-2008-0070 in the matter of **Seeley County Water District**, Owner/Operator Wastewater Treatment Plant, Seeley – Imperial County

The proposed Order provided for the Discharger to implement a compliance project (CP) to settle its liability. The Discharger was able to obtain financial assistance from a federal agency to implement the CP. Mr. Vandenberg, counsel for the Advisory Team, mentioned to the Board that he had just received from Ted Cobb, Assistant Chief Counsel, Office of Chief Counsel, State Water Board, an unsigned, undated, and draft memorandum prepared by Mr. Cobb. The memorandum provided OCC's legal opinion that Dischargers cannot use grant funds to implement compliance projects. Mr. Angel, lead for the Prosecution Team, informed the Board that the Prosecution Team had neither received nor had an opportunity to review the alleged memorandum and therefore, as a matter of fairness and due process, the memorandum should not be considered by the Board during these proceedings. Several Board members voiced their concerns about the timing of the alleged memorandum and the State Water Board's getting in the middle of telling Dischargers which monies they can or cannot spend to fix their problems. They also indicated that it would effectively place them in the role of auditors, which they felt would be outside of the scope of their official duties and that in any event, they would not be in a position to handle such auditing duties. After hearing from all sides in this matter, Ms. Way closed the public hearing and brought the issue to the Regional Board members for discussion.

MOTION: Jon Edney moved, Tom Davis seconded. The motion carried unanimously that Order No. R7-2008-0070 be adopted with the compliance project as proposed.

9. DW R7-2008-0071 Administrative Civil Liability Order No. R7-2008-0071 in the matter of **Coachella Sanitary District**, Owner/Operator Wastewater Treatment Plant, Coachella – Riverside County

Mr. Vandenberg, as a member of the Board's Advisory Team, indicated to the Board members that he determined that there was an error in the calculation of the amount of the penalty that could be applied to the Supplemental Environmental Project that was being proposed in the draft Order. Mr. Angel, as lead for the Prosecution Team, confirmed the error.

MOTION: Tom Davis moved, Ed Muzik seconded. The motion carried with six "ayes" and one "no" (Jon Edney) that Order No. R7-2008-0071 be adopted with changes to correct the SEP calculation error.

OTHER BUSINESS

10. Schedule of Board Meetings for Calendar Year 2009

MOTION: Tom Davis moved, Ed Muzik seconded. The motion carried unanimously that the Meeting Calendar for 2009 be adopted with a change of time for the January 22, 2009 meeting in El Centro to begin at 11:00 a.m.

11. Informational Update on Proposed Revisions to Water Boards Enforcement Policy – JLA

This update was postponed for a future Board meeting.

12. Informational Update on Collaborative Efforts with UC Davis for Creation of a Blueprint towards becoming a Performance Based Organization – RP/JLA

Mr. Angel informed the Regional Board that the office has contracted the services of UC Davis to provide guidance and assistance to the Regional Board and staff to enable the office to become a performance-based organization. He explained that this effort will require the Board's participation to establish the vision, goals, priorities, and operating principles for the office. Following that work, the Board's Executive Team will then develop a strategic plan and ask the managers and the staff to develop and implement operational plans to implement the strategic plan and Board's agenda. This effort is also intended to enhance efficiency and morale in the office. He informed the Board members that the staff will be contacting them to set up a date for a Regional Board public workshop to get this effort underway.

13. Informational Update on State Water Resources Control Board Activities – TAV

The Board chose to move this item to the January 22, 2009 Board meeting in El Centro.

14. Colorado River Basin Water Board Executive Officer's Report – RP

The Board chose to move this item to the January 22, 2009 Board meeting in El Centro.

15. Colorado River Basin Water Board Member Comments

The Board chose to move this item to the January 22, 2009 Board meeting in El Centro.

16. Colorado River Basin Water Board Chair's Report – EW

The Board chose to move this item to the January 22, 2009 Board meeting in El Centro.

CLOSED SESSION

17. At any time during the regular session, the Board may adjourn to meet in closed session to consider evidence received in an adjudicatory hearing and deliberate on a decision to be reached based on that evidence [Authority: Government Code Section 11126(c)(3)]; to discuss significant exposure to litigation [Authority: Government Code Section 11126(e)(2)(B)(i)]; to discuss whether to initiate litigation [Authority: Government Code Section 11126(e)(2)(C)(i)]; or to discuss initiated litigation [Authority: Government Code Section 11126(e)]. Discussion of litigation is within the attorney-client privilege and may be held in closed session [Authority: Government Code Section 11126(e)(2)].

There was no closed session.

Arrangements for Next Board Meeting

Date: January 22, 2009 at 11:00 a.m., in El Centro.

Adjournment

The meeting adjourned at 1:40 p.m.